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Index Issue — January-June, 1989

With this issue, we continue our practice of publishing a semi-annual index to the cases and news stories that have appeared in *Lawyers Weekly* during the past six months.

We began this service in 1980 in response to requests from lawyers and judges for a convenient reference guide to the newspaper, and we hope that the indexes have been helpful to our readers.

The index is divided into two parts. The first part, which begins on this page, contains a complete listing of every court or administrative agency opinion that has appeared in the paper since Jan. 9, 1989. The cases are listed by name under the appropriate court or administrative agency heading.

The cases are also indexed by subject matter, beginning on page 11. In the sections below, we have listed the courts and administrative agencies that are covered and

the subject matter headings that have been used.

Note that in the Subject Matter Index, the capital letter that appears next to the issue date in the fourth column corresponds to the court or agency from which the case originated. Reference must then be made to the section headlined "What Courts Are Covered" to translate the letter code into the appropriate court or agency.

The second part of the index is devoted to front-page news stories and feature and news articles that have appeared inside or in separate supplements since the Jan. 9 issue. Also indexed are laws that have been enacted during the past six months. Only those laws that have been listed in a box, under the heading "Important Bills Signed," are indexed.

The news story index is divided into two parts: the "News Story Index" and the "News

Story Subject Index." The former part is organized by department and lists stories by their headlines. The second part is organized by subject matter.

Trial Reports are indexed in the "News Story Index" according to subject matter.

Each index reference includes the date of the issue in which the case or story appeared and the cumulative page number (citation) on which the item appeared.

Because of space considerations, it is impossible to include in this index all the information contained in *Lawyers Weekly*. We hope you will continue to consult your issues of the newspaper each week so that you will remain fully informed.

As always, our goal is to be of service to the legal community in Massachusetts. If you have any comments or suggestions on this index issue, or on *Lawyers Weekly* in general, please let us know.

What Courts Are Covered?

The Case Name Index, which begins below, contains the title of every case from a court or administrative agency which has appeared in *Lawyers Weekly* during the first six months of 1989.

The courts and administrative agencies which are covered, together with their letter codes, are listed below:

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What Subjects Are Covered?

The Subject Matter Index in this issue contains a listing by topic of the court and administrative agencies covered by *Lawyers Weekly*.

Each case is listed under a major subject heading where appropriate.

The major subject matter headings are listed as follows:

Administrative	Corporate	Jury and Jurors	Public Employees
Admiralty	Criminal Law	Juvenile	Public Utilities
Adoption	Criminal Procedure	Labor	Real Property
Antitrust	Damages	Landlord/Tenant	Retirement
Appeals	Domestic Relations	Licenses and Permits	Schools & School Committees
Arbitration	Elections	Medicare or Medicaid	Search and Seizure
Attorneys	Employment	Mortgages	Securities
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Banks and Banking	Evidence	Municipal	Taxation
Civil Practice	Forfeiture	Negligence	Tort
Civil Rights	Freedom of Information	Negotiable Instruments	Unemployment Compensation
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How To Use This Index

This index includes cases which were reported in *Lawyers Weekly* during the past six months. The listings are alphabetical (by plaintiff's name only) within each court department or administrative agency.

Following the case name is a column listing the volume and number of the issue of *Lawyers Weekly*, which is then followed by a column listing the cumulative page number of the appropriate volume of *Lawyers Weekly* — the MLW citation. (This page number may be found on the top inside of each page of *Lawyers Weekly*; for example, 17 MLW 1545.) This column is then followed by the issue date.

The last two columns provide the *Lawyers Weekly* case number which is followed by the number of pages in that particular case. The *Lawyers Weekly* case number is to be used when ordering the full text of an opinion.

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July 1989

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Can a Policeman Sue Someone Who Intentionally Shot Him?

By Attorney Dianne Keegan, Editor-In-Chief, Lawyers Alert

William R., a police officer who was recently shot while on duty, has come to you for advice.

Shortly before noon on the day of the shooting, he heard a dispatch concerning a man with a gun at an apartment complex. He was the second officer to arrive at the scene. As he approached, he heard shots. The first officer at the scene informed him that George P., an elderly man wielding a high-powered rifle, had been shooting randomly from his apartment.

William, who was pressed up against a wall near the apartment door, then saw George open the door and start to come out of the apartment with the rifle. William turned toward him with his weapon in his hand and told George to freeze. George jumped back inside and shut the apartment door. He then shot William through an opaque-type window which surrounded the door. The bullet hit William's badge and deflected into his left arm, doing extensive damage. George was killed by police after he shot William.

Although William is getting Workers' Compensation payments, he feels that they are inadequate to compensate him for the permanent damage to his arm. Moreover, since George was quite well off, William feels that he should be able to sue his estate for damages.

What's your advice?

A Winning Strategy

Sue George's estate for assault and battery. The "fireman's rule," which for many years has barred actions by police and firemen for injuries they receive in the line of duty, is undergoing a change.

An appellate court (in Michigan) recently held in a case similar to this one that it would not apply the fireman's rule to an intentional tortfeasor whose acts required the officer's presence on the premises.

The court quoted from a New Jersey decision that said, "[T]he public policy underlying the 'fireman's rule' simply does not extend to intentional abuse directed specifically at a police officer. To permit this would be to countenance unlimited violence directed at the policeman in the course of most routine duties."

The court also reasoned that the burden of compensating an officer for intentionally inflicted injuries should not be borne wholly by the public in the form of Workers' Compensation. Likewise, a defendant should not be shielded from liability simply because he inflicts an intentional tort upon a police officer rather than a private citizen.

Lawyers Alert No. 186-12

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Case Subject Index

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This index includes all of the cases which have been reported in Lawyers Weekly during the past six months, listed by subject matter. The cases are listed by specific subject matter within broader categories — such as, "Administrative," or "Practice, Civil."

The specific subject matter listing is followed by columns denoting the volume and number of the Lawyers Weekly issue, which is then followed by the cumulative page number of Lawyers Weekly — the citation. (The cumulative page number may be found on the top inside of each page of Lawyers Weekly, e.g., 17 MLW 1545.) The next column lists the issue date of Lawyers Weekly.

The letter which appears next to the date is the letter code for the court or administrative agency from which the case originated. To determine which court corresponds to the letter used, please consult the "What Courts Are Covered" explanation which appears on page one.

The final two columns list the Lawyers Weekly number for that particular case and the number of pages. When ordering the full text of a decision, please use the Lawyers Weekly number.

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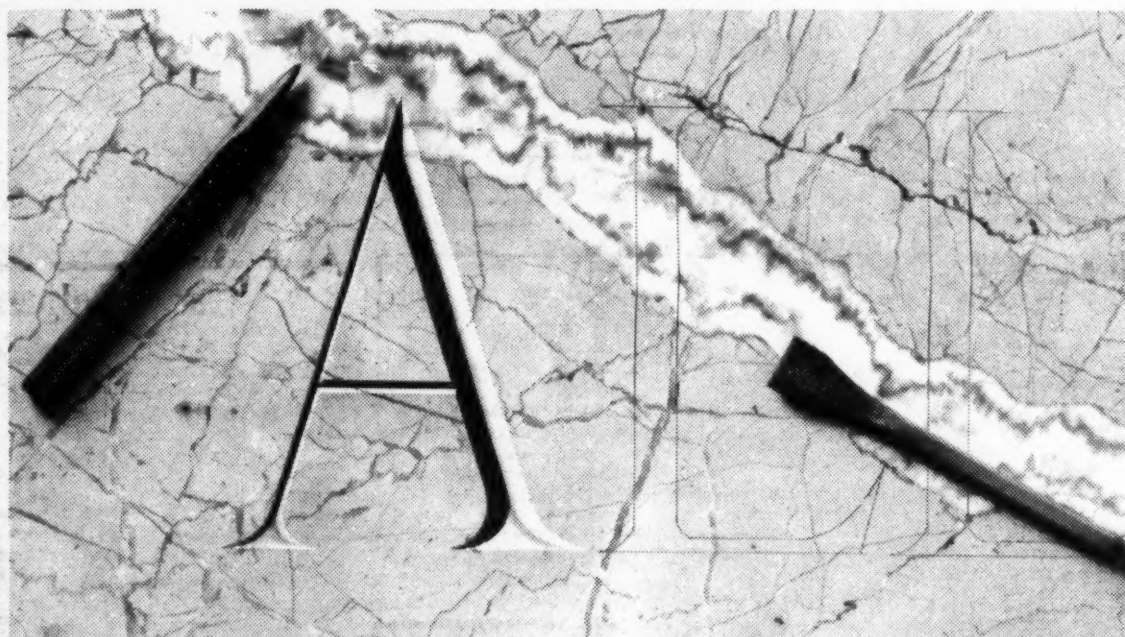
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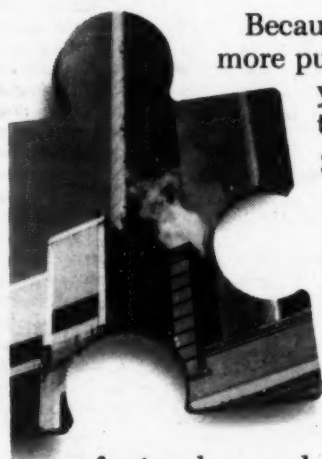


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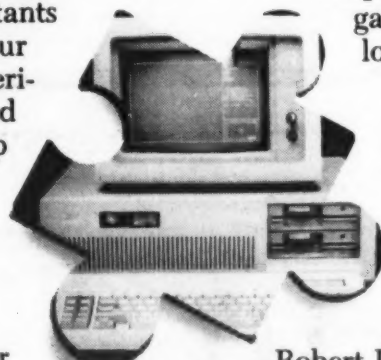
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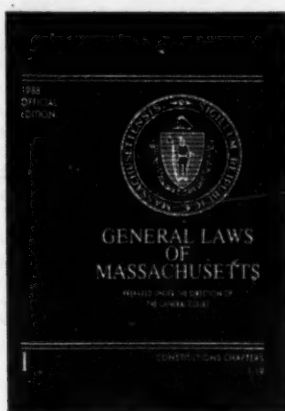
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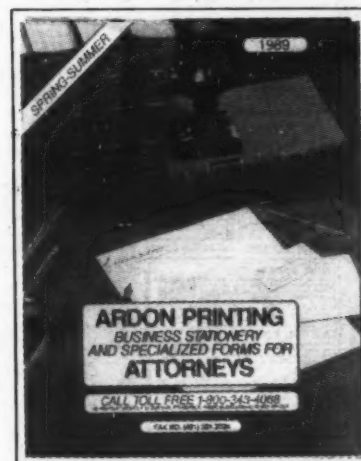
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The letter which appears next to the date is the letter code for the court or administrative agency from which the case originated. To determine which court corresponds to the letter used, please consult the "What Courts Are Covered" explanation which appears on page one.

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Massachusetts Lawyers

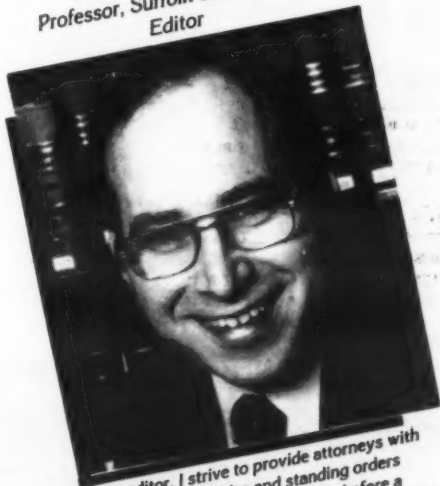
Q: Do you have the "Time Standards" for the Superior Court, Probate Court, District Court, and Boston Municipal Court?

Q: The "Standing Orders" have been extensively revised by the Superior Court. Do you have them?

Q: Do you have new Superior Court Rule 9A governing motions, oppositions, and hearings?

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Marc G. Perlman, Esq.
Professor, Suffolk Law School;
Editor

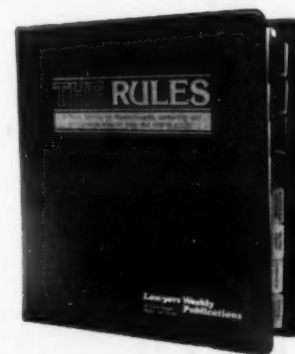


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HIGHLIGHTS

- All Massachusetts Trial Court Uniform Rules
- Hard-to-find *Standing Orders* of the Superior Court and other courts.
- Full text of civil and criminal rules with Reporter's Notes
- Uniform Practices of the Probate and Family Court
- Child Support guidelines for use in Massachusetts courts
- New District Court and B.M.C. rules concerning statement of damages and a new form to be filed with the complaint
- New rules for jury cases in criminal cases in Essex and Hampden counties
- Reproducible forms for use in Massachusetts courts
- Full text of rules for summary process cases, civil motor vehicle infractions, and support actions
- Rules of the Clients' Security Board
- Rules of the Commission on Judicial Conduct
- Analysis section by Professor Marc G. Perlman
- Superior Court tracking order
- Rule concerning time limit for service of process
- Judicial advisor: the Hon. Herbert Abrams, Justice of the Superior Court of Massachusetts

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10:40 AM: 34 PEABODY ST.—A VACANT PARCEL OF LAND CONTAINING APPROX. 10,227 SF LOCATED BETWEEN PEABODY & WARD STS. IN A RESIDENTIAL ZONE. (ECSDRG) BK 7956 PG 024—DEPOSIT \$5,000.

11:00 AM: 38 PEABODY ST.—APPROX. 3264 SF OF LAND IMPROVED BY A 3 STORY W/BASEMENT BRICK W/DECK & PORCHES. FREE STANDING APT. BLDG. CONTAINING (6) 2 BEDRM. APTS. W/SEP. UTIL. (ECSDRG) BK 8614 PG 093—DEPOSIT \$10,000.

12:15 PM: 46 PEABODY ST.—APPROX. 2800 SF OF LAND IMPROVED BY A 3 STORY W/BASEMENT BRICK W/DECK & PORCHES. FREE STANDING APT. BLDG. CONTAINING (6) 2 BEDRM. APTS. W/SEP. UTIL. BK 8614, PG 093—DEPOSIT \$10,000.

12:45 PM: 52 WARD ST.—APPROX. 5760 SF OF LAND IMPROVED BY A 4 STORY W/BASEMENT BRICK W/PORCHES APT. BLDG. CONTAINING (7) 3 BEDRM. APTS. W/SEP. UTIL. BK 8614, PG 093—DEPOSIT \$10,000.

1:15 PM: 45-47 WARD ST.—APPROX. 2610 SF OF LAND IMPROVED BY A 3 STORY W/BASEMENT BRICK W/PORCHES & DECK. APT. BLDG. CONTAINING (6) 2 BEDRM. APTS. W/SEP. UTIL. BK 8614 PG 093—DEPOSIT \$10,000.

1:45 PM: 41 WARD ST.—APPROX. 36905 SF OF LAND IMPROVED BY A 3 STORY W/BASEMENT FREE STANDING BRICK APT. BLDG. CONTAINING (6) 2 BEDRM. APTS. W/UTIL. BK 8614 PG 093—DEPOSIT \$10,000.

2:15 PM: 37 WARD ST.—APPROX. 2872 SF OF LAND IMPROVED BY A 3 STORY W/BASEMENT FREE STANDING BRICK APT. BLDG. CONTAINING (6) 3 BEDRM. APTS. W/SEP. UTIL. BK 8614 PG 093—DEPOSIT \$10,000.

TUESDAY, AUGUST 1, 1989 AT SALEM, MA

10:00 AM: 20-22 PEABODY ST.—APPROX. 3500 SF OF LAND IMPROVED BY A 4 STORY W/BASEMENT FREE STANDING BRICK APT. BLDG. CONTAINING (12) 2 BEDRM. APTS. W/SEP. UTIL. BK 8641 PG 093—DEPOSIT \$20,000.

11:00 AM: 17-19 & 23-25 WARD ST.—APPROX. 5128 SF OF LAND IMPROVED BY (2) 3 STORY W/BASEMENT BRICK APT. BLDGS. CONTAINING A TOTAL OF (12) 2 BEDRM. APTS. BLDG. ARE UNDER COMMON HEATING SYS. & SEP. ELEC. BK 8614 PG 093—DEPOSIT \$10,000.

11:45 AM: 61-64 HARBOR ST.—APPROX. 5087 SF OF LAND IMPROVED BY 2 SEPARATE 3 STORY W/BASEMENT FREE STANDING W/PORCHES BRICK & MASONRY APT. BLDGS. CONTAINING A TOTAL OF (6) LARGE 3 BEDRM. UNITS W/SEP. UTIL. BK 8614 PG 093—DEPOSIT \$20,000.

12:15 PM: 57-59 HARBOR ST.—APPROX. 10670 SF OF LAND IMPROVED BY 4 STORY W/BASEMENT BRICK APT. BLDG. HAVING PORCHES & FRONT COURT YARD CONTAINING (16) 3 BEDRM. APTS. BLDG. HAS 1 COMMON HEATING SYS. & SEP. ELEC.—DEPOSIT \$20,000.

1:00 PM: 248 LAFAYETTE ST.—RTE. 1A & RTE. 114—APPROX. 9085 SF OF LAND IMPROVED BY AN APPROX. 4466 SF 2 1/2 STORY BLDG. USED AS A ROOMING HOUSE HAVING 13 UNITS & OFFICE UNIT. HAS PAVED PARKING FOR APPROX. 10 CARS. BK 8614 PG 093—DEPOSIT \$20,000.

2:00 PM: 51 CANAL ST.—APPROX. 30253 S.F. OF COMMERCIAL ZONED LAND IMPROVED BY A ONE STORY CONCRETE BLOCK & STEEL APPROX. 6480 S.F. BLDG. HAVING 14' WALL HT. & 8 STEEL OVERHEAD DOORS. BLDG. CONTAINS APPROX. 3240 S.F. CONVEYORIZED CAR WASH & BALANCE OF BLDG. APPROX. 1080 & 2160 S.F. SET FOR AUTOMOTIVE SERVICE. PROPERTY HAS APPROX. 23000 S.F. PAVED AREA. BK 8614, PG 093—DEPOSIT \$35,000.

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Salary is \$26,100-42,100 depending on experience. DLC offers an excellent fringe benefit package. Affirmative action employer. Persons with a disability, minorities, and women are encouraged to apply. Disclosure of disability will be kept confidential. Deadline extended to July 28th. Send resume and writing sample to:

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An expanding Southeast Massachusetts business and civil litigation law firm is seeking two mid-level associates with excellent academic backgrounds and at least two years experience; the first to concentrate in the areas of general business transactions, corporations, estate planning and probate of estates; the second to concentrate in business litigation. Salary and benefits will be commensurate with experience and qualifications.

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* The American Lawyer Survey of Recruiting Firms, 1988
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Contact us for a reprint of the April 1989 study.

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Bank of New England-Essex Building
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The Board of Selectmen of the Town of Norwood is requesting proposals for legal services. Interested candidates must have at least three (3) years experience in municipal law. All proposals must specify hourly rate, the name and qualifications of each attorney who would render such services and schedule which shows when and how such services would be rendered, to Norwood Board of Selectmen, Town Hall, P.O. Box 40, 566 Washington Street, Norwood, MA 02062-0040. Deadline for applications is August 1, 1989. Norwood is an equal opportunity employer.



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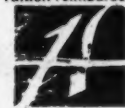
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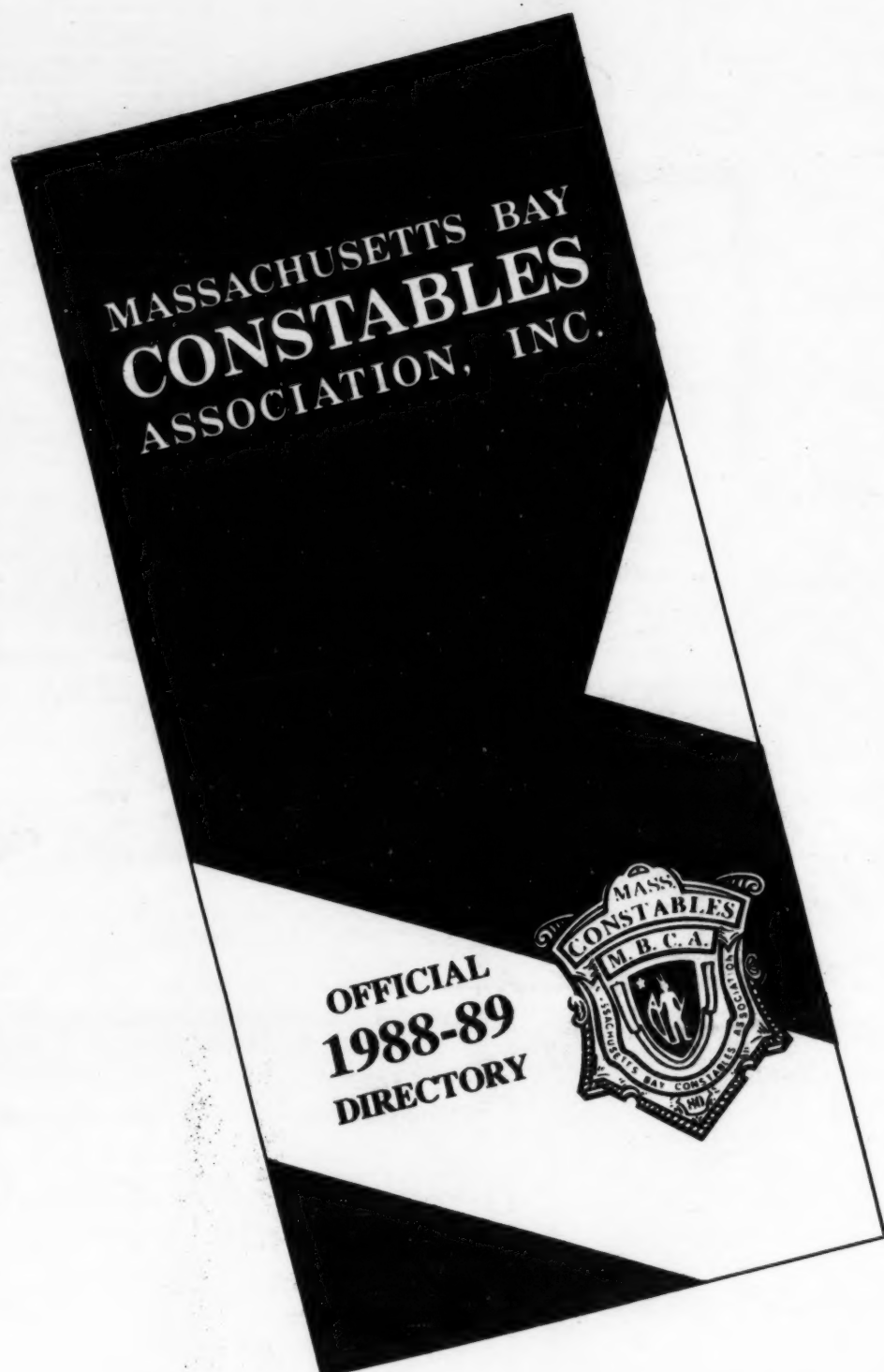
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LAWYERS MONTHLY

July 1989

Supplement to Lawyers Weekly

Consumer Law Books

Do law books for laymen provide useful information or do they encourage non-lawyers to think of themselves as the professionals?

By Carolee Morrison

Consumer law books: are they an aid to the lawyer's tarnished image? Are they a philanthropical attempt at public access to law? Or are they competition for a lawyer's business?

The answer to those questions varies, depending upon whom you ask.

At first, says Massachusetts lawyer Wendy Sibbison, a couple of lawyer acquaintances who saw her book, "Massachusetts Divorce: A Consumer Guide," made some "jokes that showed they were a little threatened."

"One divorce lawyer I know, who charges at the top end of the fee scale, told me that when he saw I'd included a chapter on 'Fees,' he sounded the internal alarm."

"I guess he quickly opened to those pages," she goes on, "and when he saw that his fees were still on the scale, in the ballpark, he was relieved. He'd thought it was going to say, 'if any lawyer charges more than X amount, you should shop around.'"

She's not alone. Lawyers who author consumer law materials — whether it's software, loose-leaf will kits, do-it-yourself divorce and probate guides, books on real estate and business law or on "file your own" bankruptcy — often feel the wrath of professional colleagues.

A Power Issue

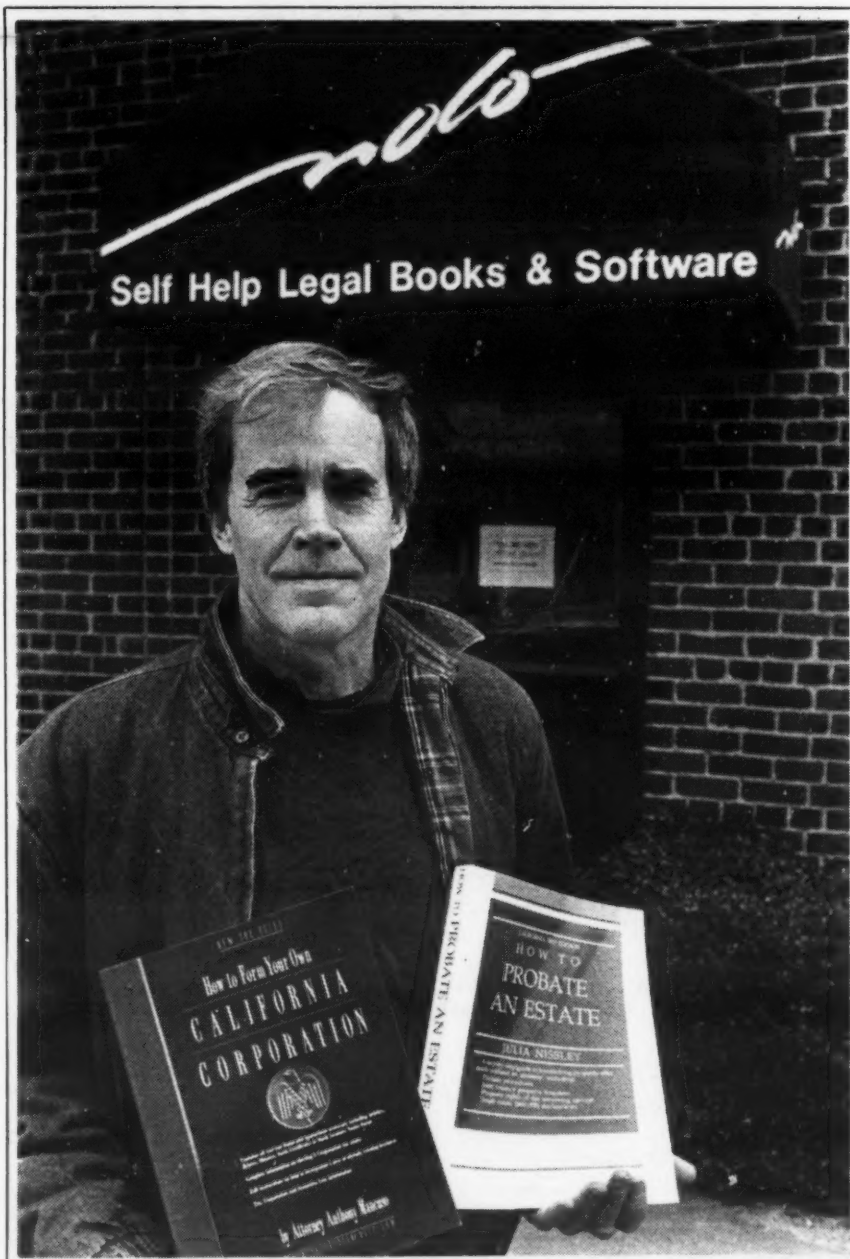
"I don't think it's a matter of lawyers losing business from it," says Sibbison. "I think the anxiety is a power issue. When a book tells a client all the right questions to ask, lawyers have a sense of unease."

But that changes. After a year in print, her book has gotten respect. Now Sibbison says lawyers call to ask where clients can buy it.

An attorney's initial hostility about consumer law material, she says, is often replaced with an appreciation for a better informed, more educated client.

The professional bar is also coming around to sanction consumer law materials. That's because, ironically perhaps, many bar associations, including the American Bar Association, now publish them.

ABA Task Force on Outreach to the Public outgoing chair Howard Vogel, of



NOT USUALLY COMPETITIVE — Attorney Ralph Warner, founder of California's Nolo Press, says the idea of consumer law publishing is not usually framed as a competitive one. Warner now speaks on "access to law" panels. He says the clients of large-firm lawyers aren't going to care about will kits, do-it-yourself divorce books and computer software guides to filing your own bankruptcy.

Knoxville, Tenn., says the bottom line is that the materials be accurate, well documented and clearly written.

After that, he says, it's part of the current movement toward public "access to law."

"It's important for people to know when they have a legal problem," says Vogel, "to know when to seek help, to be able to recognize the symptoms before they seek out a remedy."

Or, as he puts it, "A more educated client is a better client."

Asked why the Association of Trial Lawyers of America (ATLA) went into consumer law publishing with its year-old, slick magazine, *Everyday Law*, editor Anne R. Grant says, "Public education is a good thing."

"The more people know about the law, the better they are as clients. For one thing," she adds, "they know what it's reasonable to ask a lawyer for."

Asked whether ATLA did not fear approbation from colleagues, Grant says ATLA lawyers, who also sponsor "people's law schools" tend to "always be taking on the establishment anyway."

Comfort With Lawyers

But Grant is quick to point out that among *Everyday Law's* 90 to 95 percent non-lawyer subscriber base, "It doesn't seem to make any difference to them that ATLA is publisher. People are comfortable with the idea. They're not suspicious because it's lawyers."

"In fact," she says, "readers are comforted that lawyers are connected with it. That gives it a certain authority."

However, the 10-to-15 year consumer law publishing history definitely comes out of an anti-lawyer strain.

One of the first, and now the largest, consumer law publishers, Ralph Warner, lawyer-founder of Nolo Press, says at first the enterprise got no respect.

"We started as a couple of dropped-out poverty lawyers operating out of a brown-shingled attic," he says.

Back in 1971, they'd published a brochure, "How To Do Your Own Divorce," which

(See page 6)

INSIDE

Features

Consumer law materials now are published by reputable professional bar associations. Indications are that the books and software are "hot" sellers. Some say it's all an innocent part of the growing trend to public access to law. But others insist these materials aim to put small and solo practitioners out of business.

Page 1

Hourly billing is under siege. Law firms must realize that computers, which make it possible to do the same amount of work in far less time, have some profound effects on the bottom line. Will value billing soon replace the detailed hourly bills clients have come to expect?

Page 3

Defense lawyers say that overwhelming case loads, relatively low income and continuous challenges to their ethics, along with skepticism from the public and the bar about why they desire to represent the accused, gets them angry.

Page 4

Two young California lawyers parlay a commitment to the law and a shared love of sports into a successful partnership that after the initial ups and downs of a new business seems to be holding its own. After lease negotiations and budget planning, they ask why more lawyers don't take the plunge and open a private law office.

Page 7

Columns

LEGAL LANDSCAPE:

Lawyers want to go to the moon, it seems, in growing numbers. Is that because there aren't enough clients on earth? Lawyers say in the future they won't just be practicing space law, they'll be practicing law in space.

Page 2

BOOK REVIEW:

Logic escapes lawyers, according to one judge, somewhere between the rigors of English classes, in undergraduate school and arguing cases in the trial court. A little refresher on what makes thinking fuzzy can mean a lost case is not a reflection of an argument that "flies in the face of reason."

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LAWYERS MONTHLY

Supplement to Lawyers Weekly

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Legal Landscape

Lunar Lawyers Proposed By Year 2000 A.D.

"I have always wanted to go to the moon," confesses attorney Patrick Gibbs.

"Since I was eight years old, I really thought it would be a great place to stand and look out at the universe.

"There's things you can do and see on the moon that you couldn't do any place else, things that are not possible on earth," says Gibbs. "I mean, you can do whatever is possible at a fraction of the earth's gravity."

He goes on about a science fiction fantasy. "You could have a lunar recreation area at one-fifth the earth's gravity. Just imagine a large racketball court, a confined interior space. You could maneuver around, with the proper aerodynamic aids, like wings to flap."

A former Army lawyer who grew up in Michigan, Gibbs is now a general practitioner with the Roswell, Ga., firm of Harrison & Associates.

Gibbs presides over the Atlanta chapter of the National Space Society. As a member of the New York-based Space Frontier Foundation, Gibbs drew up their papers of incorporation and non-profit status.

In connection with the 20th anniversary of Apollo 11's lunar landing on July 20, 1969, he has been scheduling astronauts and other space luminaries to speak in the nation's science museums, public libraries, private clubs and even shopping malls.

The Moon Petition

Moreover, Gibbs drafted a petition now being circulated all around the country, called the Return To The Moon Petition.

A project of the Space Frontier Foundation (c/o The Intrepid Sea-Air-Space Museum, 46 St. at 12 Ave., New York, N.Y. 10036), the petition is being distributed by young professionals — lawyers, engineers, architects and other space enthusiasts.

They hope to collect 1.5 million signatures by year's end to present to President Bush. The petition presses for more funding, a commitment to lunar research and a 2000 A.D. deadline to establish a permanent human settlement on the moon.

Speaking for the Space Foundation, New York member Robert Werb says there "definitely is a disproportionately high number of attorneys" connected with the space movement, also known as "space active" lawyers.

Why should lawyers, in particular, want to go to the moon? They say the U.S. went in 1969 as tourists, but now should go back as residents.

Also working to collect signatures on the moon petition is Boston's Kevin A. Griffin, a corporate attorney with the firm of Rich, May, Bilodeau & Flaherty.

Certainly when human civilization moves into space, we'll need the same services as are needed on earth. And presumably, lawyers will be included in that.



Boston attorney Kevin A. Griffin published an article (written in non-billable hours), "Organizing A Local Return To The Moon Petition Campaign." He believes that one day lawyers will be not just practicing space law, they'll be practicing law in space.

"Personally," says Griffin, "I think space is the next frontier. It's like North America was 300 years ago. The analogy is to carving a civilization."

As benefits, Griffin cites ecological and economic aspects of a permanent lunar settlement. He says there's potential to replace coal and nuclear energy with unlimited solar power generated by lunar satellites. He also says it would be cheaper to use the moon's own rocks and minerals for earth explorations rather than transport costly materials into space from the earth.

Non-billable Lunar Hours

Active for five years now with the Space Frontier Foundation, Griffin says he is happy to stand in Boston's financial district after work, collecting signatures on the petition.

"Would you like to sign a petition to return to the moon?" he asks passersby, hustling back and forth from work. Doing

this service, Griffin wears his lawyerly pin-striped suit and carries a clipboard, undaunted by people who fail to acknowledge his presence.

"It's strictly a hobby at this point," says Griffin, who adds that 80 percent of his law firm colleagues and various friends outside the space movement have signed the form.

Griffin has recently published an article (during non-billable hours), "Organizing A Local Return To The Moon Petition Campaign," which among other things, exhorts volunteers to start new moon teams by positioning a strategic press release in the local newspaper.

Is the idea that lawyers want to be on the moon, because there aren't enough clients on earth?

"Perhaps it is a bit long-term to project a need for lawyers in space," says Griffin. "But certainly when human civilization moves into space, we'll need the same services as are needed on earth. And presumably, lawyers will be included in that."

Griffin adds that he feels sure one day lawyers will be practicing law in space, not merely practicing space law.

Law Practice in Space

On the idea of lunar lawyers, Gibbs is similarly visionary.

"Put enough people up there," he says, "and eventually somebody will want to draw a will or organize a business. Hopefully, lawyers will be needed in the problem-solving role of the profession, to arbitrate disputes, maybe to write a constitution — not just for suing people."

Asked would it be scary to be up there, pouring over Justice Holmes in the stratosphere, Griffin says a giant, free-space-colony cylinder, designed to rotate in a stable orbit, would be pretty safe.

"You could plug a leak before the air gets in," he says. "It would be as safe as the surface of the earth."

Gibbs does not feel he'll be a lawyer in space. For that, he says, the U.S. space project would have had to proceed much faster than it has.

"I'll be 50 years old in the year 2000," he says, the deadline for the permanent lunar settlement. "And by the time we have an expanded presence, I'll be physically disqualified. It'll be 2200 A.D."

For now, Gibbs has his automated time and billing system coded to receive all the pro bono hours he puts in for the space foundation. He says that merely to have a computer on his desk, in a lot of lawyers' terms, is a wave of the future.

—C.L.M.

Letters to the Editor

Law Firms Should Identify Their "Corporate Culture"

To the Editor:

Further to my quoted remarks in the June Lawyers Monthly ("Re: Compensation Allocation"), I would add that firms break up because they do not share a common culture.

Many firms never even discuss the question of a firm culture, because they are not sure what it means or cannot find the time to break away from the daily practice to develop a focus for their overall efforts.

Strategic and long-range planning sessions are extremely helpful tools to aid a

firm identify its "corporate culture" (i.e., the mission, management philosophy and style of operation) and to sharpen its focus.

Jeffrey M. Aresty
Aresty, Levin, Orenstein & Wernick
Boston

Boston Firms Stand Up For Model Marketing Programs

To the Editor:

Paul Lupinacci's article in the May Lawyers Monthly ("Minorities Have the Marketing Edge"), while interesting, was also incomplete.

There are several established minority firms in Boston, yet none of these were mentioned. For example, Wiley & Richlin, Grayer, Dilday & Brown and Fitch, Miller & Tourse all have and for some time have had successful marketing programs.

Moreover, Fitch, Miller & Tourse is one of the 21 official minority-owned participants in the American Bar Association's Minority Counsel Demonstration Program; whereas a Chicago firm featured in the article — Kirk, McCargo & Arbulu — is not as yet a participant in the program.

Fitch, Miller & Tourse has recently successfully "joint-ventured" a \$225,000 real estate project (CambridgeSide Galleria) with a major Boston firm. The joint venture was initiated for one of the minority law firm's clients, and I believe it may be one of

the largest such collaborations in the country.

Harrison A. Fitch
Fitch, Miller & Tourse
Boston

Litigator Cites Follow-Up Issues

To the Editor:

Your grand-versus-humble courtroom article (May Lawyers Monthly) was an imaginative treatment of a somewhat challenging subject.

But I was particularly surprised to get a copy of the article as a follow-up to my

interview. In all the times I have been interviewed by journalists over the years, this is the first time a promise was ever followed through to send me a copy of the article.

Richard E. Crouch
Arlington, Va.

Computer Efficiency Spurs Value Billing Debate

By Carolee Morrison

"Gee, our hours are down. Our income is down. But we sure create beautiful documents!"

That's what law firm consultant John G. Iezzi says more and more law firms may notice in the future.

Formerly general manager of the Richmond, Va., law firm of McGuire, Woods, Battle & Boothe, Iezzi predicts that to correct the situation, the current system of making detailed, hourly bills for clients is going to come to an end.

As documented in "Beyond the Billable Hour: An Anthology of Alternative Billing Methods," just published by the ABA Section of Economics of Law Practice, many law firms that have become automated are trying to find answers.

Due to computer efficiency, lawyers can do roughly the same amount of work in a fraction of the time. Will they bill for only a fraction of the time? Add to the caseload? Do more work per case?

The situation is complicated by the fact that law firms have used their computer efficiency as a selling point to clients.

But now, says consultant Iezzi, nurtured on these ideas, clients have come to equate "faster with cheaper." So will law firms take in less money for the same work done in shorter time?

Clearly, technology has some problematic effects on the bottom line.

"For Services Rendered"

Iezzi notes that the standard monthly bill, before automation, for many attorneys was an invoice-sized sheet of letterhead, dated and addressed to the client, with the line, "For Services Rendered," and a dollar amount.

Some firms gave more explanation, extending that line into a paragraph or two, usually written extemporaneously, after the services were performed. Some even attempted to reconstruct an hourly log of activities and fees from file documents and a secretary's memory.

Ironically, it is computer technology which made precise hourly billing, such as it is known today, possible. The currently top selling time-and-billing software systems allow instantaneous recording of even telephone calls by the tenth of an hour.

Attorneys with PCs on their desks switch into the billing system after each segment of time spent doing something on a case — for one-quarter hour or 10 hours — and enter that time on the spot.

Or they fill out a time-sheet and let bookkeepers enter it into the computer. Then at month's end, a few pressed buttons bring up all the entries on each case and presto, there are the bills.

Says Atlanta attorney Patrick Gibbs, of the firm Harrison & Associates, "With the software, I issue client bills by the third of every month, like clockwork."

But if super-efficiency is what law firms want, is it what they need?

Too Much Efficiency

Says Gibbs, the hourly billing is "a challenge in some sense. For some matters, you might go back to a flat fee type of thing. A matter might take 20 minutes on a computer, but because of what it is, something complex, you still charge \$475."

Essentially, value billing separates the worth or value of work from the time it takes to do it.

Not only because the value of the work may be more than the hours it takes an automated firm to do it, lawyers are questioning hourly billing.

• Is it realistic to assign one hourly billing rate to a lawyer, assuming every aspect of every matter he or she completes is worth the same amount?

• Don't hourly rates reward the inefficient, allowing a firm to profit more from extra, perhaps unneeded work?

• Conversely, don't such rates penalize the efficient, leaving no incentive to work fast and clean?

• Don't hourly rates encourage too much time for discovery, the minor details of a case, intra-office conferences and too many lawyers going to hearings and depositions?

• Don't hourly rates remove incentive to

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ALL TIME ACCOUNTED FOR
—A sample screen from WHO/WHAT/WHEN software shows meetings, events, reminders and To-Do's. Coupled with records stored in time-and-billing software, these entries make a detailed accounting of every minute of time the attorney and staff spend on a case.



re-use viable research and documents invented for prior, similar cases?

• Don't hourly rates discourage early settlements?

With technology forcing the issue of value billing, its proponents say that modern hourly billing methods may revert to something related to the old "For Services Rendered" — or at least a more narrative, subjective description than the currently detailed bills.

A New Hybrid

In their favor, value-rate advocates say flat fees reward efficiency, let clients know in advance what a service will cost, and encourage lawyer and client to negotiate an agreed-on amount for a case, making for a good working relationship.

They also say flat fees are more appealing to consumer-oriented legal services shoppers, because they eliminate unpleasant surprises at the end of a case. Moreover, a flat rate allows clients to think in terms of the value of the work, not the more nebulous issue of the worth of the attorney.

Current detailed bills, says Iezzi, have been pitched to clients as the greatest thing since electric light.

For 15 years now, he says, "lawyers have been telling clients that it's great, nurturing that hourly billing mentality. But now they have to wean themselves away from that mentality."

Now, says Iezzi, firms are going to need to worry that they "not only pass on the benefits of technology to clients, but also that they get some of it for themselves."

New Hampshire consultant Donald Coker, who is skeptical that value billing will ever attract today's sophisticated clients, makes the point that this is all in the future, even for many highly automated firms.

Simply having computers doesn't make a law firm efficient, he says, and many "automated" lawyers take the same amount of time to do the same amount of work — and still can bill the same number of hours.

"The percentage of law firms that are using these machines to meet their top productive capacity," says Coker, "is very small."

Some Delayed Productivity

Coker estimates that only about 25 percent of automated firms use computers to their utmost productivity. Five or 10 years down the road, as more firms do realize the productive capacity, however,

that percentage will rise.

"Some forward-looking firms," says Coker, "are beginning to see, 'We used to charge \$1,000 for this. Now we can reduce the time to \$200,' and think about the consequences."

That is the point when the lawyers must decide whether to market the firm to attract more clients, go back to value billing or produce a bigger workload per case.

"Particularly," says Coker, "when a client is hip to the fact that it only took a firm eight hours to do the work, they're going to say, why pay \$1,000 an hour?"

At that point, he says, the competition factor sets in. Other firms may "approach clients in a subtle way, and say, 'Look, you've been paying these guys \$10,000. We'll charge you \$5,000.'"

Boston attorney Lee T. Gesmer, of Lucash, Gesmer & Updegrave, a highly computerized firm, says, "I disagree that automation necessarily shortens the amount of time clients spend on a project."

According to Gesmer, "Work expands to fill the time. It's the 'Peter Principle.' I'm

not the first to say that. Computers don't save work. They let you produce more."

As Gesmer says, "When I look at documents I produced 10 years ago in a firm that had no automation, I'm amazed at the much lower quality. By quality, I mean the depth with which we went into things."

"But I've never heard an attorney say, 'I'm losing business because of automation,'" he says.

Capture The Costs

For firms that are seeking to modify their time-and-billing systems to allow for value-added fees, Iezzi says there are some innovative ways to "capture the costs," using the currently popular software, but making a sort of hybrid of value and hourly billing.

Says Iezzi, "You can still enter a particular amount of hours, but the system will value the time."

One technique is to put a "document charge" into the computer system.

"If I prepare a great brief," says Iezzi, "or a really terrific memorandum, and I know I'm going to use it again for another client, I can code that item in the computer, so the billing system will automatically add another \$200 to the client's bill, if that particular memorandum is used."

The automatic charge "hits the system," says Iezzi, so the lawyer can be "reimbursed for all the initial research and development."

Using this sort of "coding" against a particular will, for example, says Iezzi, "You could say the lawyer didn't get full value for inventing the will, but now he or she can amortize some of the research costs against the service."

Iezzi also cites the possibility that "I as the lawyer prepare a great spreadsheet on Monday. The following week, I use it for another client. Each successive use involves the same reduced number of hours."

"But you put a code on the time sheet," says Iezzi. "For instance, you code in a little 'A' beside that function, which increases the \$100 hourly fee by another 25 percent."

An Invisible Partner

This type of computer valuing is particularly important, says Iezzi, when other partners or associates might be using work invented by another lawyer in the firm.

"Say a partner on the fifth floor doesn't even know the person who invented the spreadsheet," says Iezzi. "He just finds it in the data base and wants to use it for his client too."

If you have the 25 percent extra code on the billing system for use of that spreadsheet, the firm will be able to "bill the file based on the work the first lawyer did. The second lawyer codes in that spreadsheet, and the time-and-billing system comes up with the little 'A,' and wango . . . it adds the value of another 25 percent."

All of this, says Iezzi, is a vital "automation strategy" which firms must develop, similar to the partner compensation strategies they develop to keep the firm afloat.

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By Linda Corman

In the 1987 movie, "Suspect," the presiding judge appears bent on frustrating defense attorney Kathleen Riley (aka Cher) at every turn. He sustains nearly all the prosecuting attorney's objections and overrules most of hers. He continually calls her out of order and threatens to disbar her.

True, she has several strikes against her. She is a woman, and the judge she is trying a first degree murder case in front of is the guilty party. (There's also a slight problem of jury tampering.)

But her biggest crime seems to be the fact that she is a criminal defense attorney at all.

In the world of everyday law practice, that is certainly the way many defense attorneys feel. Of late, the image of defense counsel has been sliding lower and lower until, in many cases, the opinions held of them seems to come close to the opinions held of their claims.

And even though defense counsel's work is difficult, demanding, often not well paid and sometimes self-sacrificing on behalf of the clients most in need of and most cut off from the legal system — still, this area of the law is not at the top of most law school graduates' lists.

Many in the criminal defense bar go still further, saying they are the objects of opprobrium and contempt.

There is a perception that, "I'm a pariah and I'm aiding and abetting (criminals) to line my pockets," says Albert Krieger, a Miami-based criminal defense lawyer,

to stand on behalf of those accused of crime.

"The vast majority of Americans don't believe in the bill of rights," claims outspoken Harvard professor Alan Dershowitz. "It's always been difficult for the defense attorney to do his job. You don't get the Nobel Prize for it. We mostly represent guilty people. That's a hell of a job. (Public pressure seems to mandate, in these cases), our job is not to get the truth, the whole truth and nothing but the truth."

But that's wrong, Charles Shaw, a Clayton Mo. attorney, agrees.

"Historically, people never understood the role of the defense attorney," he says.

"It's almost inevitable that the lawyer becomes a lightning rod (for emotions) against the accused," is the way Litman puts it, "because the lawyer is taking the most active role during a trial."

But despite the obvious fallacies, antipathy for the criminal defense lawyer seems to be growing.

There is an attitude that, "all rights should be suspended until we do away with drugs," says St. Louis attorney Donald Wolff.

"Rules are being written in drug cases, because people think (it's) a war crime and you can do what you want to catch (offenders). . . and it spills over into other areas," agrees David DuMouchel of Detroit.

Scott Harshbarger, a Massachusetts district attorney, and many other attorneys, see the pressure to convict clients accused of drug-related crimes as one of a number of problems that is building public frustration about crime and leading to attacks on the criminal defense bar.

"We, as a society, feel we've been victimized by crime. As Sol Aulinsky said, 'a conservative is a liberal who has been mugged.' We, as a society, feel things have broken down and that we've been mugged. . . So, those who represent the accused are seen in a different light," says

Martin Rosenthal, training director for the Committee for Public Counsel Services in Boston, says he feels the malign rap when judges assess him court costs for failing to appear at one of two simultaneously scheduled court appearances. As one of the legions of overworked public defenders, Rosenthal finds it demoralizing to be thanked for trying to cope with his formidable case load by being disciplined.

summing up the feeling shared by many of his colleagues.

For those in the defense bar, being accosted at cocktail parties by incredulous friends and colleagues asking how they can sleep at night giving representation to persons accused of crime is the norm.

New York attorney Jack Litman, who defended Robert Chambers in the widely publicized Jennifer Levin/Central Park murder case, felt the stigma in some unexpected ways. Besides the barrage of negative media publicity, there were nameless personal threats, as well — for instance, when he received expensive Spiegel's catalog living room sets, sent by anonymous detractors who hoped he would have to pay for them himself.

Just Doing A Job

Still devoted to being a defense attorney after nearly 20 years of practice, even Litman was surprised at the extent of the animosity directed at him for mounting an aggressive client defense.

Martin Rosenthal, training director for the Committee for Public Counsel Services in Boston, says he feels the malign rap when judges assess him court costs when he fails to appear at one of two simultaneously scheduled court appearances. As one of the legions of overworked public defenders, Rosenthal finds it demoralizing to be thanked for trying to cope with his formidable case load by being disciplined.

The assault on the defense bar can also be seen in the comprehensive criminal forfeiture act that allows for the confiscation of profits from criminal acts, including those used to pay lawyers' fees, lawyers say.

It has always been difficult to defend people accused of crimes, and the taint that attaches to the defense bar makes it more and more difficult to find competent counsel

Harshbarger.

Rosenthal, the Boston public defender, repeats the widely held view that in its frustration, the public has thrown ever more problems on the court, in hopes of finding quick solutions. As a result, courts are ever more overburdened and feel mounting pressure to act swiftly and efficiently rather than with due consideration for individual rights. Judges, being human, are not immune to caving in to some of the pressures.

But the defense bar's image exists not only in the public context. Within the profession, the "bad press" also paints defense counsel as the bad guys and plaintiffs' attorneys as heroes.

Wolff sees lawyers sharing the public's dim view of defense attorneys, in part as a result of a fierce competitiveness which has affected traditional collegiality and ethics throughout the profession.

Because winning has become the overriding goal of lawyers, says Wolff, largely because that is how they figure they will make the most money, trials have become an all-out war between prosecution and defense. It used to be that prosecuting and defense attorneys would deliver their closing arguments and go off for beers together while awaiting a verdict, he says. But not now.

The Status Ladder

"Now, it's a lifetime war of hatred and animosity. It starts with grades, with the best jobs (paying) \$60,000 to \$70,000 right out of law school, going to the top 5 to 10 percent of a class, those in the middle getting maybe \$30,000, those at the bottom getting peanuts," and others unable to locate positions, at all.

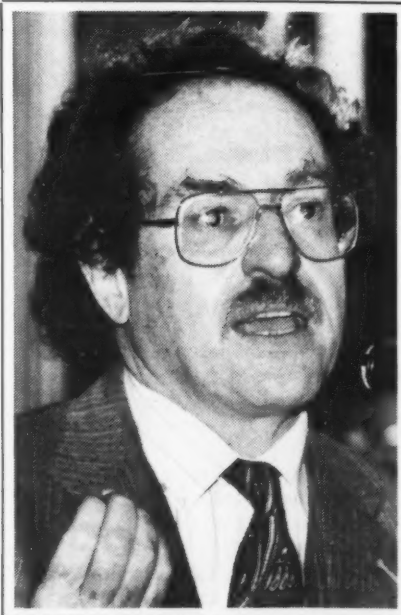
The defense attorney willing to settle for \$10,000-a-year, next to the corporate lawyer

Overwhelming case loads, dwindling peers, low incomes and challenging prospects of fee recission, have done it. "You too may be the accused, or balking at representing defendants who are not always minorities."

Is The Defense Bar G



IT'S ONLY A MOVIE — In the role of attorney Kathleen Riley, actress Cher, in "Suspect," says she feels

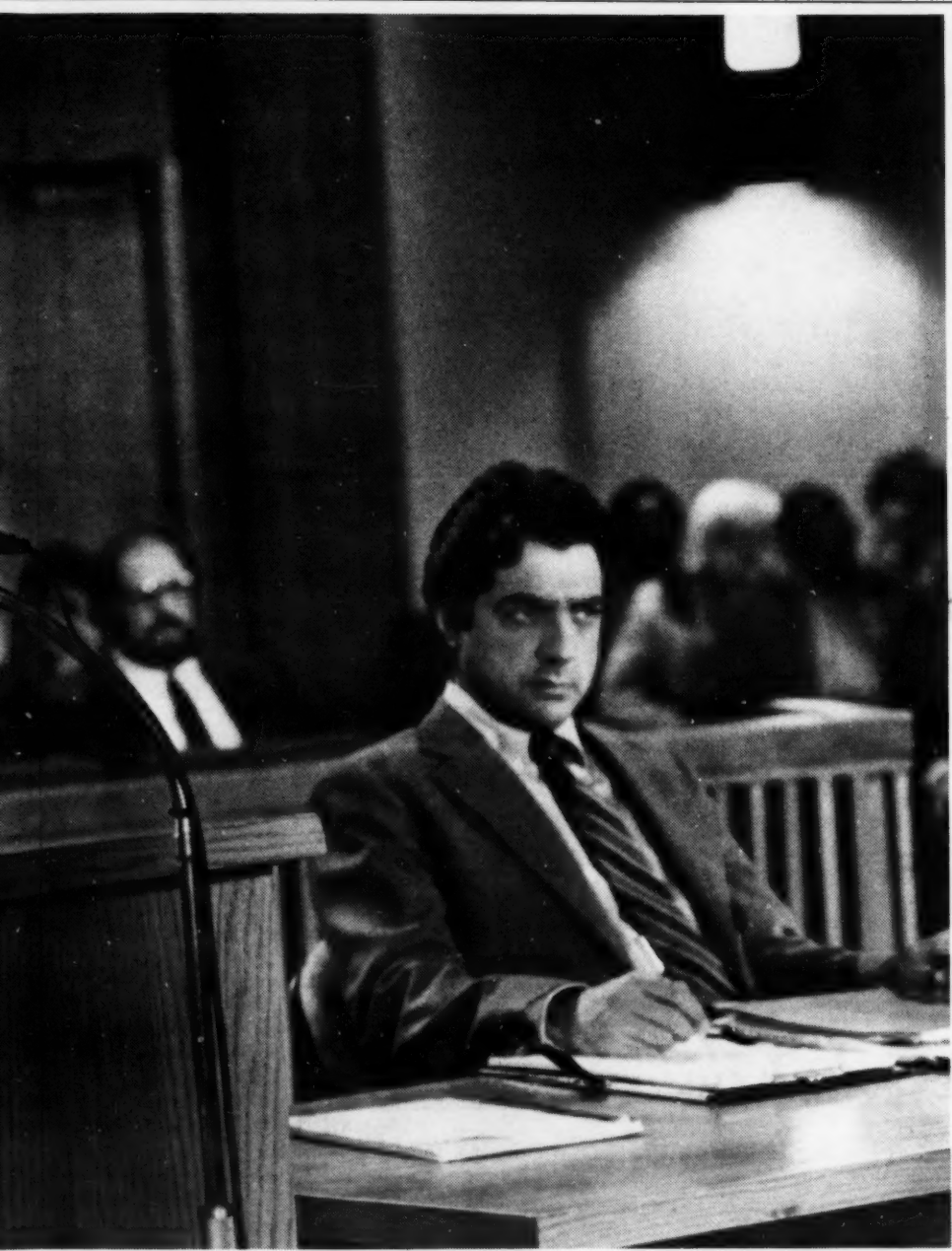


"It's always been difficult for the defense attorney to do his job. You don't get the Nobel Prize for it. We mostly represent guilty people. That's a hell of a job."

—Alan Dershowitz
Harvard Law Professor

indling respect from judges and challenges to ethics, along with have defense lawyers up in arms. d, one day," they tell skeptics, dants, who, contrary to opinion, orities and the poor.

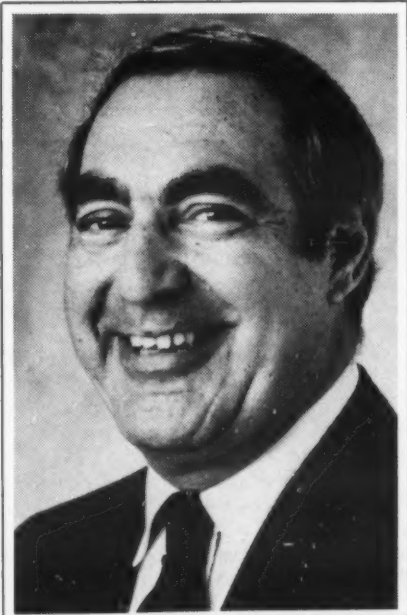
Going On Trial?



she feels half her problems come from the simple fact that she chose to be a defense lawyer.

"It used to be that prosecuting and defense attorneys would deliver their closing arguments and go off for beers together, while awaiting a verdict. But they don't do that anymore."

—Donald L. Wolff
St. Louis attorney



collecting over \$500,000, is held to be "low status," regardless how high his or her law school ranking was, what the top potential income is and how excellent an attorney the person may be.

The overarching goal to win has also sparked a debate about whether it is proper for a defense attorney to allow a client to commit perjury, claiming he has not committed a crime to which he has confessed to his lawyer.

To Wolff, his job is to ensure that if his client is convicted, it is done lawfully, not to win by all means, including perjury. And it is not his job to determine whether his client committed a crime.

Whereas ethics of large firm corporate law departments rarely come up for professional debate, attorneys say, it is somehow taken as a matter of course that defense counsel's ethics must be scrutinized.

To an extent, money equals status.

Still another reason for the erosion of the defense bar's image is the fact that public defenders are so poorly paid, says Frank Dunham Jr., of the Arlington, Va. law firm of Cohen, Gettings, Alper & Dunham.

As a result, the work has devolved to a group of largely younger, less experienced lawyers who make a specialty of it. Dedicated though many may be, because they have had less experience, and because the system no longer works as originally intended — to spread the work across the spectrum of lawyers — sympathy and understanding for the defense bar's work has also diminished, he says.

Percy Wall, of the Greensboro, N.C. firm of Wall & Courtright, also thinks a trend towards specialization has intensified the problem. As a result of specialization, the image of lawyers who do almost exclusively criminal defense work is not brightened by the reputation they earn for their non-criminal work.

While some lawyers say all criminal defense lawyers are looked at with suspicion,

"A lawyer's credibility is of utmost importance in representing his clients," says Wall. "If jurors perceive a lawyers' credibility as low, (in terms of professional status), they place less credibility on what he says."

On the subject of fee forfeiture, if defense lawyers are compelled to try to determine the source of fees in order to avoid their being forfeited, the entire notion of the presumption of innocence may be destroyed, says Dunham.

Krieger sees the entire sixth amendment right to counsel at risk.

And many lawyers cite a combination of the poor image and the lower pay that defense lawyers command, as conspiring to discourage law school graduates, especially the best ones, from heading for criminal defense work. Although, on the other hand, the willingness to brave all the attendant obstacles often means lawyers who choose defense work are dedicated and involved.

Given the entire situation, what can be done to restore luster to the defense lawyer's image?

Lawyers, nearly unanimously, say educating colleagues and the public is the number one solution.

The public "has always had a healthy distrust of (authority) that made the defense of (the) accused a noble undertaking," says Dunham.

"We, as professionals, have a special responsibility to educate people about the fundamental importance of constitutional rights and not to be swept up by the legitimate public concerns (about crime)," adds Harshbarger.

Motivation to Madness

But, with all the disadvantages, why would anyone want to do criminal defense work?

As John Cicilline, a Rhode Island criminal defense attorney who in 1985, after three years, was acquitted of charges of conspiracy

Because winning has become the overriding goal for lawyers, says Wolff, largely because that's how they feel they'll make the most money, trials have become an all-out war between prosecution and defense. It used to be that prosecuting and defense attorneys would deliver their closing arguments and go off for beers together while awaiting a verdict. But not now.

others say there are sharp distinctions, depending on the type of crime and client.

Krieger, for example, says lawyers defending those accused of white collar crimes are unsullied by their work.

The Miami lawyer, who sees the forfeiture of fees as a sine qua non of the assault on defense lawyers, points out that no one ever questioned the source of the funds that prominent attorney Arthur Lyman received to defend "junk bond" specialist Michael Milken or that former presidential appointee Griffin Bell was paid to represent the financial firm of E.F. Hutton.

Litman sees the distinction not as a function of class but of the public not seeing white collar crime as threatening them to the same extent as violent crime.

Class Struggle

In another important point, Wolff and others say that some of the antipathy for defense lawyers arises from a prejudice against poor people and minorities, those most frequently accused of many crimes. But, he says, this is nothing new.

Rosenthal agrees, saying the contempt for the client being transferred to the defense attorney, is manifested by judges keeping public defenders waiting sometimes all day while they take private attorneys' cases right away.

Dershowitz, however, dismisses the notion, saying some of the "worst attitudes," about the criminal defense bar and some of the fiercest cries for law and order, are heard from minority communities.

Whatever the causes of the plummeting image of the criminal defense lawyer, the dangers are rife, lawyers believe. At stake is a renewed supply of lawyers to do defense work, proper operation of the criminal justice system and, regardless of social class or nature of the accusation, the chance for a defendant to get a fair trial.

and obstruction of justice, says, "Being a malpractice, corporate or other type of lawyer is more lucrative, safer and you can hope to be a judge, someday, if you keep your act straight."

And, as Cher says, (before either cracking her case or meeting juror Dennis Quaid), "I could go crazy and earn money at it."

But despite the low regard and lower pay, many defense lawyers say they would not do anything else. True, there are those who are discouraged, and, if they did not feel it was too late in their careers, they would change directions. But for many, it is a mission that they remain dedicated to, despite the problems.

And many retain more than a stubborn determination that what they are doing is necessary. Many speak of the thrill they still derive from their work, when they have defended the underdog.

"It keeps you young and on your toes," says Missouri's Shaw. "You, walk into a courtroom, everyone is against you, you have to change that, you have to inch-by-inch, to reverse the color of the hats. . . . There is nothing better than to hear a jury say 'not guilty' — and the (client) gets to take the child home. That's worth the whole game."

And there's a certain perverse pleasure criminal defense lawyers derive on occasions when the tables are turned on their fiercest detractors, says DuMouchel of Michigan.

When the daughters or sons of those critics are charged with possession of cocaine, (the frantic parents) "think there ought to be lawyers moving heaven and earth (for them)," says DuMouchel. "Those of us in this work have seen a lot of that. . . . It depends on whose ox is being gored. Then they see what the system would be like if they didn't have lawyers to defend the accused."

Consumer Materials Must Be Accurate And Clear

(Continued from page 1)

in six months sold 500 copies. That disturbed the local bar. Quite aside from paeans about "access to law," he and his legal aid lawyer-partner were professional pariahs.

The Sacramento Bar Association, for one, he says, issued press releases carried in the newspapers as "consumer warnings against a dangerous pamphlet."

Says Warner, "We'd only wanted to give people who couldn't afford to pay a lawyer some useful information" to help them solve their problems.

Fifteen years later, he says, it's an entirely different story. Warner appears frequently on ABA and California bar-sponsored "access to law" panels, and is considered the grandfather of consumer law books produced today.

Although lawyers like Sibbison say the last idea they have in mind is to compete for lawyer business (Quite the opposite, says Sibbison, "I always gave my clients a lot of good information they could use."), Warner says it's war.

A Competitive Issue

"This is not usually framed as a competitive issue," he says. "I don't like to talk about the impact of consumer law books on the profession."

About his business, which he says now takes in \$6 million a year, Warner says, "I don't like them to know how much impact we're having."

But Warner says that unlike medical self-help books — "the credible stuff, not the quack fringe — that will give you 'XYZ' information, but ultimately wind up and tell you to go see a doctor," his books aim at self-sufficiency.

"We're saying, I can take 70 percent of the people 80 percent of the way with no lawyer," says Warner.

Many consumer law materials, including Warner's, do, in fact, contain caveats to see a lawyer in case of complications, often outlining, specifically, just what those complications might be.

But Warner still argues for self-sufficiency.

As to the bar association endorsements he gets today, Warner says the reason for the change is clear. The lawyers most affected by consumer self-help, he says, are the small and solo practitioners involved with personal service law, not the large-firm lawyers who populate the associations.

Says Warner, "A self-help law book is not likely to teach how to handle your own asbestos litigation. What I do day-to-day, it's the little guys, the personal service bar we run against."



"I don't think it's a matter of lawyers losing business...I think the anxiety is a power issue. When a book tells a client all the right questions to ask, lawyers have a sense of unease."

—Wendy Sibbison
Massachusetts attorney

Clients of most bar association lawyers, says Warner, aren't going to be interested in checking a little box on a simplified will form.

Too Small For Anybody

But other lawyers producing will kits, do-your-own-divorce books, business forms and the like, say the type of case these

materials seek to guide a consumer through, are too small even for the small practitioner.

How many lawyers really want to handle a case, they ask, involving dog law, or adoption by a guardian, or simple uncontested divorce or a landlord coming into your apartment without permission?

Michigan lawyer Michael Maran, who has published divorce kits for 10 years,

says, "Some lawyers are tolerant and supportive, because they don't want to mess around with the cases that aren't big money makers, like a \$200 or \$300 divorce."

Maran says that to get such clients off their backs, lawyers will sometimes even recommend a company that sells a kit.

Boston lawyer Arnold Goldstein, who has published self-help books for eight years and, more recently, has built a sales and distribution arm for his company that markets 50 different legal forms ("They're going like gangbusters," he says.), makes the point that most consumers wouldn't seek out a lawyer for this type of work, anyway.

"Who is going to call a lawyer and say, 'Will you draw me a promissory note for \$500,'" asks Goldstein. "Most people don't run to a lawyer for this stuff."

Saying he is super-conscientious, refusing to design a form for things like a partnership agreement, which he considers too complicated for a consumer to do, Goldstein says other lawyers have wanted him to create more complex consumer materials than his two-page forms.

"But if I'm a layman," he says, "I don't want to read 200 or 400 pages of technical stuff. I'd rather pay somebody than read 200 pages."

Doing A Favor

Sibbison believes that, once past the initial shock at seeing her book, colleagues consider it's doing them a favor.

The lawyers don't exactly order a stock of her books to give to clients, the way that dentists hand out toothbrushes. But apparently, they do "say it fills a need for them."

Says Sibbison, "During the initial interview, when you go over the nuts and bolts of a case with the client, information they're hearing for the first time is not going to sink in. They're not going to remember words like 'discovery' or 'financial statement.' So it's great to have a book."

The book, she says, helps to pound in the information, and next meeting, the lawyer-client relationship can move forward.

Los Angeles personal injury lawyer Margaret Davis also says she's doing lawyers a favor. Fresh from doing the TV talk show, "Geraldo," in connection with her book, "Lovers, Doctors and the Law," which tells consumers about their rights when a lover infects them with AIDS, she says the book gives information on a narrow specialty most lawyers don't know about.

She says, "with these cases, many people can't find lawyers who'll represent them."

Armed with her book, they go to attorneys' offices. The lawyers, she says, learn as much about this case law, "cases that have been on the books since the 1800s," as the clients do. The clients convince the lawyers that they have a case.

But Michigan's Maran acknowledges that there still is resistance, "a resistance to do-it-yourself stuff, even if it's not a complicated situation."

Heart Of The Matter

It's one thing for a bar association to write magazine articles about your legal right to sue for discrimination or how easy it is to manage the stress of a lawsuit — even the history of the U.S. constitution, which sensitizes people to the law and serves to "feed" them into lawyers' offices.

These are considered a sort of "teaser" and really have little to do with total self-help.

But it's another thing to go to the heart of the matter and keep the clients away.

Says Maran, even the small cases are "loss leaders. You get clients in for a will or simple divorce, then sell them other services. There's a resistance, because you could start a relationship with a small matter."

Maybe the next case, he says, would not be so small. Or maybe a referral to something substantial would grow out of the relationship.

The volatility of the issue is no mystery to Nolo's Warner, who says that unless small and solo personal service lawyers upgrade their skills and use support and technology to greater advantage, "they'll be dead as a dodo."

He says, "There's still plenty of room for lawyers. If lawyers would dedicate themselves to removing their practice as much as possible from details of the average person's life," then the conflicts will be resolved.

Book Review

Judge Rebukes Lawyers Who Lack Logic

LOGIC FOR LAWYERS:
A GUIDE TO CLEAR
LEGAL THINKING
By Ruggero J. Aldisert
Clark Boardman Company, Ltd.
220 pages, \$19.95

Are you a lawyer on the verge of "flying in the face of reason?" To know the truth, there is Senior U.S. Circuit Judge Ruggero J. Aldisert's test. It's a classic, logically correct syllogism, with a nonsensical major premise:

All federal judges have green blood.
Judge Aldisert is a federal judge.
Therefore, Judge Aldisert has green blood.

The idea is that if lawyers find themselves thinking in such patterns, they should run out and buy this book, immediately.

Aldisert, of the 3rd U.S. Circuit Court of Appeals, understands how it could happen. He says the discipline and study of strict logic are difficult to maintain. Moreover, lawyers are surrounded with and deluged by scores of influential negative examples of non-lawyerly fuzzy thought.

For example, tavern brawling, Aldisert observes, is full of material fallacy, to wit: "I know the game was fixed! How could a team lose three in a row to the Mets when

they beat them six times straight?"

This is permissible in laymen, writes Aldisert, but not lawyers.

Non-logical Laymen

He also cites, as offenders, U.S. senators and congressmen, news broadcasters and even Socrates at his own defense trial.

Senators and congressmen, he writes, "blithely offer comments on sudden events, without a whit of understanding of the underlying factual premises."

Of TV newscasters, Aldisert asks, in their sound bites, "are they guilty of hasty generalization? Are they guilty of dicto simpliciter, attempting to project a general rule from that which is an obvious exception to the rule?"

Aldisert tells how he came to record his observations on lawyer logic.

Back in 1961, he was sitting on the Pennsylvania trial court bench and already had strict ideas about good opinion writing. At the time, Pennsylvania required trial judges to write an opinion in every appeal.

To make the job easier, Aldisert devised an orderly method to analyze briefs and oral arguments.

However, the stuff of his analyses — the lawyers' prose that came before him — was not always amenable to efficient analysis.

"As I read through the briefs," Aldisert writes, "I sought to find the squeaky clean

order that was drummed into us in undergraduate writing class: theme, topic sentence for each point and supporting data." Usually, it was not to be found.

Later, teaching at the University of Pittsburgh law school, he felt the students didn't do much better. That was depressing. If exam pressure didn't force people to be literate, what would happen later, when they were attorneys on trial?

Writing A Book

But it wasn't until the early 1970s that Aldisert, leading a seminar on judicial opinion writing at New York University, started, in effect, making his own textbook for lawyers.

"I trudged along," writes Aldisert, photocopying articles, book excerpts and other materials as a guide to legal reasoning. He presented them to law school classes, judicial seminars and attorneys.

The collection turned into his new book. And while Aldisert says law students, professors and judges will naturally be interested, he thinks practicing attorneys may have to be force-fed.

But the advantages, he writes, are obvious. While it's somehow palatable to lose a case because the law is stacked against you, it's quite another thing to lose, because your argument makes no sense.

Attorneys Describe How To Start A Law Practice

By Kim Bergheim

Attorney Sam Polverino remembers the first time he saw the official Davila & Polverino law firm stationery.

"Seeing your name on letterhead is a reflection you are responsible for your own business," he says.

It was February 1988, and that letterhead really brought home the decision he and his colleague, attorney Edward Davila, had made to open a private law practice on their own.

For seven years, they had been colleagues in the Santa Clara County (California) public defenders' office. They'd had adjoining offices and shared intense commitments to the law and to sports (as participants and fans).

In effect, Polverino was "burning out," after years of handling an overwhelming, high-stress case load. He had ardently represented clients who'd been institutionalized for 30 to 40 years. For his part, Davila wanted to practice law in his own environment.

Both of the lawyers were aware that starting a law practice is a step many attorneys tend to think about, but never actually take.

Somehow, the security and predictability of someone else cutting the paychecks and dealing with non-legal details, such as "overhead," is usually enough to convince most potential small or solo practitioners to stay in positions where, in fact, they are not the boss.

But the two attorneys were to find the whole task was "do-able," with a lot of advice and intense advance planning.

Help From Friends

One of the first attorneys to give them advice was Richard Gregg, a personal injury lawyer and chairman of the local county bar association law office management committee.

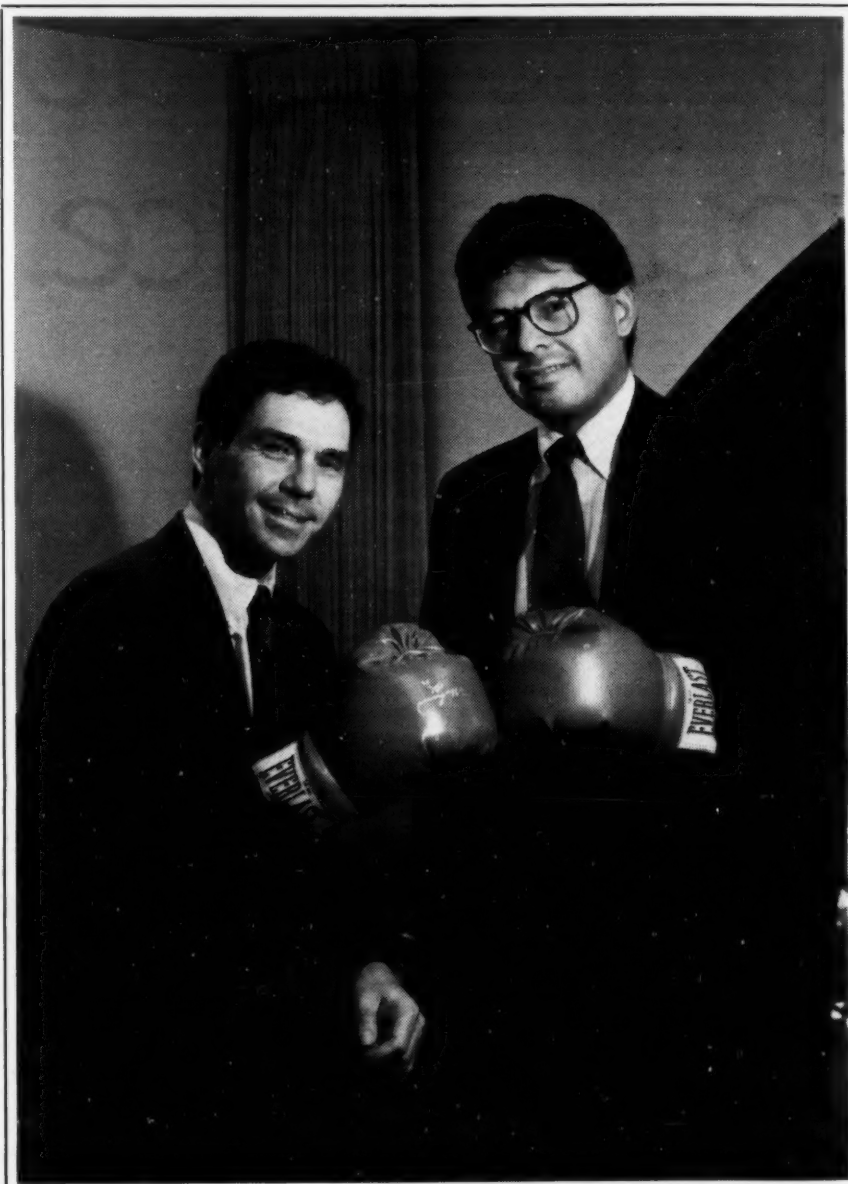
Basically, Gregg warned them to be patient. "The first two years are scary when you set up your own office," Gregg reflected, in a recent interview.

"You try to meet overhead expenses the first two years. You don't begin making a living until the third year. That time-plan doesn't fit the fantasy of lawyers who think they'll make money overnight."

More advice comes from Michael Fletcher, a former public defender who now practices with a small Redwood City, Calif., firm. He advised the new partners to carefully choose their cases.

"Every dime is important," says Fletcher. That is "especially hard for a public defender to understand, because charging money is

In Polverino's office, along with historical photos and lithographs, is a photograph of himself, Davila, the boxer Muhammad Ali and Massachusetts Congressman Joe Kennedy, inscribed "To Sam." Red boxing gloves autographed by Ali dangle from the door knob in Davila's office, while Polverino has a pair of baseball mitts tied to a coat rack in his office.



THE GOOD FIGHT — Partners Sam Polverino (left) and Ed Davila (right) parlayed a mutual commitment to the law, and to sports, into a private practice that seems to be beating the odds.

making plans and took personal leave from the defenders' office to iron out details.

A Rainy Day

At the advice of attorney Gregg, they planned having reserves available for the possibility of slow months. They've been conservative with their money, in anticipation of rainy days.

Then there was setting up the bookkeeping system. They'd never dealt with accountants' ledger cards and automated spreadsheets. Support came via Polverino's sister, Joanne, a California bank executive. She did the initial set-up and still maintains the books.

Negotiating an office lease was another new experience. Neither Davila nor Polverino had background in contract law, so they relied on their litigation skills.

"We had a 30-page contract," says Polverino, "that we went through. We picked out the points we thought were the most important. We didn't really have a command on the language, but figured if we could negotiate prison terms, we could negotiate a contract."

Davila wanted a good location, wanted to make sure the office would be in a building that was financially solvent, with stable management.

The busy financial district location they

chose had undergone considerable urban redevelopment, turning into a dense area populated with lawyers, bankers, stock brokers and CPAs.

In fact, part of the reason the two lawyers were able to strike a good deal was that the downtown redevelopment actually involved an over-building of office space. Developers and landlords were, in a sense, crying for tenants, bending over backwards to attract the right clientele.

Free Office Rent

Davila and Polverino got free rent for the first six months. They had the empty interior space built to their own specifications. Now, their 1,800 sq. ft. office suite has a reception area, their offices, a third office subleased to an insurance agent, a law library and an area for file cabinets and a copy machine.

Although professional consultants to the legal profession stress the importance of marketing, Davila and Polverino already had a good reputation in the community and, to this date, have spent little time marketing their practice.

Instead, they cultivate new professional contacts through county bar association activities. They also serve as board trustees and members of numerous committees. Having grown up in the area where they

practice, the two have family and friends as referral sources. But mostly, their clients are referrals from other attorneys.

Last April, two months after opening up shop, Davila and Polverino decided to hold an open house, which was attended by about 250 attorneys, judges and other well-wishers. Davila says the turnout reaffirmed their decision to go it alone. "It showed us we have a lot of support," he says.

Counselor Vs. Advocate

The two lawyers still practice criminal law, but Polverino says there's a different approach to defense work in private practice. There's a tendency to settle cases in order to avoid trial fees, he says. Consequently, Polverino has taken on a counselor role, in contrast to his advocate stance as a public defender.

"As a public defender," says Polverino, "I was trying cases frequently. Now in private practice, I'm not trying cases as quickly; so I have more time to talk with clients and explain the risks and advantages of cases."

For Davila, time management was a major adjustment, once in private practice. In the public defender's office, each attorney set up his own calendar. Investigators, support staff and other attorneys were around to help on cases.

Now, Davila says he spends more time picking up cases and conducting investigations. He says he plans a "things to do" list each morning but admits he doesn't always complete the list. "I can't control the interruptions," he says.

On their own, the two partners work 60-to-80-hour weeks, which includes the weekends. Both say they've sacrificed leisure activities and vacations because of time and money.

They even retired from the Freedom Fighters, an all-public defender softball team.

However, it seems the long hours are paying off. They started to take a draw in September. Until then, their salary had been their savings.

"Our income doubled in May 1989 from what it was in May 1988," says Davila, "so that's a good sign we're making a success of our practice."

Red Boxing Gloves

And their sports interest has become part of the character of their law practice. For instance, alongside the files, law books, awards and diplomas in Davila's office are sports memorabilia, such as, a baseball autographed by Juan Marichal, the San Francisco Giants' former pitcher.

In Polverino's office, along with historical photos and lithographs, is a photograph of himself, Davila, the boxer Muhammad Ali and Massachusetts Congressman Joe Ken-

"We had a 30-page lease contract to go through... We didn't really have a command of the language, but figured if we could negotiate prison terms, we could negotiate a contract."

—Attorney Sam Polverino

foreign to their beliefs. It's difficult to turn down cases, but you've got to keep the business-end in perspective."

To actually set the fees, Davila and Polverino determined a reasonable fee schedule based on what other San Jose, small firm lawyers were charging — an average, hourly rate of \$150.

To develop long-term goals, they bought a yearly planner and wrote down monthly goals. They met with an accountant and a tax consultant, and they selected a telephone system. They spent many lunch hours

"Our income doubled in May 1989 from what it was in May 1988, so that's a good sign we're making a success of our practice."

—Attorney Ed Davila

nedy, inscribed "To Sam."

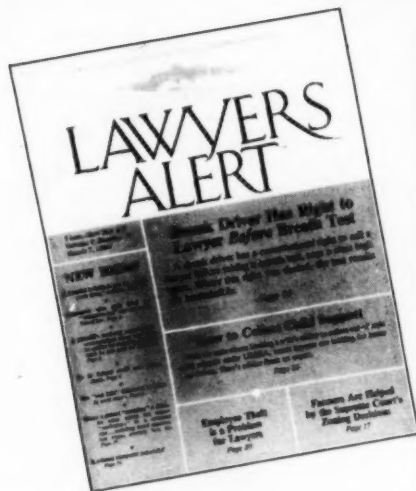
Red boxing gloves autographed by Ali dangle from the door knob in Davila's office, while Polverino has a pair of baseball mitts tied to a coat rack in his office.

The lawyers toss a stuffed football to each other while they discuss cases at the end of the day.

The days of a steady flow of clients, support staff, office supplies and malpractice insurance provided by the public defender's office are history. But all indications seem to be that they won't be going back.

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